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Supreme Court, U.S.
FILED
JAN 7 - 2008
OFFICE OF THE CLERK

NO: 07-1167

IN THE

SUPREME COURT OF THE UNITED STATES

VIRGINIA MEISTER – PETITIONER

v.

STATE OF INDIANA AND THE CITY OF UNION CITY- RESPONDENTS

ON PETITION FOR WRIT OF CERIORARI TO THE INDIANA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED FOR REVIEW

Does a search of a vehicle "incident to arrest" require either a nexus to the crime for which a suspect is being arrested or a legitimate "officer safety issue" or do Belton (453 U.S. 454; 69 L.Ed.2d 768; 101 S. Ct. 2860 (1981)) and Thornton (541 U.S. 615; 124 S. Ct. 2127 (2004)) define a "bright line" rule that a search of a vehicle "incident to arrest" is proper when a suspect is not in the automobile when the arrest physically occurs, there is no nexus between the crime of arrest and any evidence that may be found as a result of the warrantless search of the vehicle and there are no officer safety concerns expressed or implied?

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IV. CITATION TO OPINIONS BELOW

The Indiana Court of Appeals rendered an opinion on 4/27/07, Cause No. 68A04-0604-CV-00196. The official reporter Citation is 864 N.E.2d 1137 (Ind. App. 2007).

V. BASIS FOR JURISDICTION

1) On March 14, 2007, the Randolph County Superior Court rendered judgment in which it found the search of Virginia Meister's truck incident to the arrest of the driver, her son, John Wymer, was lawful under the Fourth Amendment. The trial Court ordered her truck forfeited as methamphetamine were found pursuant to the search of the truck.

2) The Indiana Court of Appeals affirmed the trial Court on April 27th, 2007. That opinion is included in the Appendix to this writ at page 12.

3) Rehearing was denied on June 19, 2007. Appendix p. 35.

4) The Indiana Supreme Court denied transfer on October 9th, 2007. Appendix p. 37.

5) This Court may review a judgment from a State Court of last resort pursuant to 28 U.S.C. 1257(a).

VI. CONSTITUTIONAL PROVISIONS

The 4th Amendment to the U.S. Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

VII. STATEMENT OF THE CASE

A. FACTS

1) Virginia Meister was the owner of a 1996 Chevrolet pickup truck. Transcript p. 34. Appendix 40.

2) On October 22, 2003, Officer Bradbury of the Union City Indiana Police Department, observed John Wymer (Meister's son) driving the truck. Transcript p. 4. Appendix p. 41.

3) Bradbury believed Wymer's driver's license was suspended. Transcript p. 4. Appendix p 41.

4) Bradbury began to follow Wymer and contacted his dispatcher to confirm whether or not Wymer's license was suspended. Transcript p. 6. Appendix p. 42.

5) Bradbury followed Wymer to a convenience store where Wymer parked and went into the store. Transcript p. 6. Appendix p. 42.

6) Bradbury pulled into a parking lot next to the convenience store while waiting on dispatch. Transcript p. 6. Appendix p. 42.

7) Wymer came out of the store and came over to the police car and engaged the officer in conversation asking if the officer knew something he didn't know. Transcript p. 6. Appendix p. 42.

8) Wymer returned to the truck. Transcript p. 7 Appendix p. 45.

9) Dispatch advised Bradbury that Wymer was suspended. Transcript p. 7. Appendix p. 43.

10) Bradbury drove his cruiser closer to the truck, got out, and approached the truck. Transcript p. 7. Appendix p. 43,44.

11) Wymer then got out of the truck and was talking on his cell phone. Transcript p 7. Appendix p. 44.

12) Wymer told Bradbury he didn't think he was suspended, so Bradbury called dispatch again and confirmed that Wymer was suspended. Transcript p. 7. Appendix p. 44.

13) Wymer was arrested for Driving While Suspended and placed in handcuffs. Transcript p. 7. Appendix p. 44.

14) Other officers arrived and a search of the truck was made incident to Wymer's arrest while Wymer

was in the back of Bradbury's police car. Transcript p. 8, 13. Appendix p. 45, 49.

15) In the search of the truck, a pill bottle was found. The contents of which field tested positive for methamphetamine. Trial Court's Judgment, Transcript p.35. Appendix p. 5, 49.

16) The State filed a complaint for forfeiture of Meister's truck. Trial Court's Judgment, Appendix p. 4.

17) Trial was held on March 14th 2006 at which the Randolph Superior Court Ordered the forfeiture of the truck. Trial Court's Judgment, Appendix p. 11.

18) Meister appealed and the Court of Appeals affirmed the trial Court. Appellate Opinion, Appendix p. 34.

19) The Indiana Supreme Court denied transfer on October 9th, 2007. Order of Indiana Supreme Court, Appendix p. 37-38.

B. THE FEDERAL QUESTION AT TRIAL COURT LEVEL

At trial the State attempted to enter evidence obtained as a result of the search of Meister's truck. Appendix p. 44, 45. Meister objected on the grounds of the 4th Amendment, claiming no nexus between the crime of arrest (Driving While Suspended) and a search of the truck pursuant to the 4th Amendment.

Transcript p. 8, 9. Appendix p. 45, 46. A continuing objection to the line of questioning was lodged. Transcript p. 11. Appendix p. 49.

At no time did the State argue the search was for officer safety.

The trial court overruled the objection relying on Black v. State 810 N.E.2d 713 (Ind. 2004), by stating:

> [O]ne traditional rationale for the search incident to arrest was to protect the officers by "removing any weapons that (the arrestee) might seek to use," Stevens v. State 710 N.E. 2d 277 (Ind. App. 1998)....the search of a suspect's automobile is valid under this exception even if the suspect has been "removed from the scene...". Trial court's written Judgment. ruling. Appendix p. 5.

C. THE FEDERAL QUESTION AT THE APPELLATE LEVEL

At the Appellate level, Meister raised the Federal Question in her argument on pages 9-14 of her Appellate Brief (Appendix p. 50-55) by arguing that Wymer could not have retrieved a weapon since he was in police custody and no evidence of driving while suspended could have been found. Appendix p. 54. She stated that under the 4th Amendment the burden is on the State to prove that at the time of a search an exception to the warrant requirement exists. She exhaustively proceeded to analyze this Court's opinion in Thornton v. United States (541 U.S. 615; 124 S. Ct. 2127; 158 L. Ed. 2d 905 (2004)) and argued Thornton's plurality did not address the

issues of the instant case as they relate to a "search incident to arrest". Appendix p. 50-55.

The Indiana Court of Appeals relying on Black supra. and Thornton supra, affirmed the trial court. Appellate Opinion. Appendix p. 13-34.

On July 19, 2007, Meister filed a Petition to Transfer Jurisdiction to the Indiana Supreme Court. One of the issues was: Whether search of a vehicle incident to arrest requires either a nexus to the crime of arrest or some valid officer safety concern. That question was briefed on pages 4-7 of that Petition. (Appendix p. 59-64. The Indiana Supreme Court summarily denied transfer. Appendix p. 37, 38.

VIII. ARGUMENT

This Court should review the case of Meister v. State of Indiana because the Indiana Court of Appeals has decided an important Federal Question in a way that it conflicts with the decision of the Arizona Supreme Court, and that question of federal law has not, but should be, settled by the United States Supreme Court.

Meister, throughout the entire litigation has been consistent in her position.

At trial, she objected to the admission of the evidence to the search of the truck as having no nexus to the crime of arrest. Transcript. p. 8. Appendix p. 45, 46.

On appeal she argued that there were no officer safety issues since Wymer was handcuffed and away from the truck, and there was no reason to search the vehicle for "driving while suspended." Meister's Appellate Brief, Appendix p. 52, 53.

Meister's Reply Brief, Appendix p. 57, 58, Meister's Petition to Transfer, Appendix p. 62, Meister's Reply to State's Response to Petition to Transfer, Appendix p. 65, 66.

The State has also been consistent in its position as:

1) The State argued at trial...

> "Black v. State...permits a search in such, such fashion as it was done here...the commission of a criminal offense...gives rise to the ability of the police to search incident to arrest" Transcript. p. 9, 10. Appendix p. 46-48.

2) In the State's Appellate brief the State relied on Black supra and Thornton, supra. and argued the Appellate Court need not address Meister's invitation to limit either the holding's of Black or Thornton. Appendix p. 56.

3) In the State's reply to Meister's Petition to Transfer, the State argued:

> Meister attempts to cobble together the various concurring and dissenting opinions in Thornton v. United States, 541 U.S. 615 (2004) to fabricate a holding that is contrary to the actual holding of Thornton, then uses her interpretation of Thornton as a basis for claiming:
>
> > With its decision in the case at bar, the Appellate Court has ruled on an undecided question of law as to a federal Question that has not been clarified by the United States Supreme Court. This Court should rule in conformity with the rationale behind the Thornton decision

> and find the search of the truck unlawful.
>
> ...
>
> Despite her convoluted attempt to obfuscate Thornton, Meister ignores the plain, clear language of the Indiana Supreme Court in Black v. State, 810 N.E.2d 713 (Ind. 2004)...
>
> ...Black makes clear that an officer may search a suspect's vehicle only if the suspect is arrested. Id. It is the arrest of the suspect, not the charge for which he is arrested, that authorizes a search of the suspect's vehicle. Thus, Meister's claim that the police had no authority to conduct a warrantless search of her car because of the unlikelihood of finding any evidence in it pertaining to Wymer's crime of driving while suspended, fails in light of Black, which has already definitively decided the issue Meister attempts to raise on transfer. Appendix p. 65.

The Indiana Supreme Court in Black v. State supra, relied on Thornton supra in applying a "bright line" rule to search incident to arrest, allowing a search incident to arrest regardless of analysis of officer safety or nexus of the crime arrest for. Black supra at 716.

However, the Arizona Supreme Court in State v. Gant 216 Ariz.1; 162 P.2d 640 (Ariz. 2007) stated in reference to Gant:

> This case deals with...the threshold question whether the police may conduct a

search incident to arrest at all once the scene is secure. ...[w]e must determine whether officer safety or preservation of evidence, the rationales that excuse the warrant requirement for searches incident to arrest, justified the warrantless search of Gant's car. Id at 643.

The Gant court further stated:

> Because Thornton's holding was carefully limited to the question presented, the ***645** Supreme Court did not address whether, even if an arrestee is a recent occupant, a search of the arrestee's vehicle is nonetheless unlawful if concerns for officer safety or destruction of evidence-the Chimel justifications-no longer exist as the time of the search. See id. at 622 n. 2, 624 n. 4, 124 S. Ct. 2127.
>
> We are aware that most other courts presented with similar factual situations have found Belton and Thornton dispositive of the question whether a search like the one at issue was incident to arrest. E.g., United States v. Mapp, 476 F. 3d 1012, 1014-15, 1019 (D.C. Cir.) (upholding search of arrestee's car conducted after he had been handcuffed and placed in patrol car), cert. denied, 127 S. Ct. 3031 (Jun. 25, 2007); United States v. Hrasky, 453 F. 3d 1099, 1100, 1103 (8th Cir. 2006) (same), cert. denied, ----U.S. ----, 127 S. Ct. 2098, 167 L. Ed. 2d 812 (2007); United States v. Osife, 398 F.3d 1143, 1144, 1146 (9th Cir.

2005) (same); accord State v. Waller, 918 So.2d 363, 364, 366-68 (Fla.Dist.Ct. App.2005) (upholding search of arrestee's truck conducted after he was handcuffed and "secured at the back of the truck"); Rainey v. Commonwealth, 197 S.W. 3d 89, 91, 95 (Ky.2006) (Upholding search of arrestee's car conducted after he was handcuffed and "so far from his vehicle that it was unlikely he could have accessed it"), cert. denied, ---U.S. ----,127 S.Ct.1005, 166 L.Ed2d 713 (2007); State v. Scott, 200 S.W.3d 41, 43-44 (Mo.Ct.App. 2006) (upholding search of arrestee's car conducted after he had been handcuffed and placed in patrol car); See also Thornton, 541 U.S. at 628, 124 S.Ct. 2127 (Scalia, J., concurring in the judgment, citing cases upholding searches conducted after arrestee had been handcuffed and secured in patrol car). We do not, however, read Belton or Thornton as a abandoning the Chimel justifications for the search incident to arrest exception. See Thornton, 541 U.S. at 621, 124 S. Ct. 2127 ("In all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle."); Belton, 453 U.S. at 460 n. 3,101 S.Ct. 2860 ("Our holding today does no more than determine the meaning of Chimel's principles in this particular and problematic context. It in no way alters the fundamental principles established in the Chimel case regarding the basic scope of searches incident to lawful custodial arrest.").

> Because neither Belton nor Thornton addresses the precise question presented here, we must, if we are to maintain our constitutional moorings, rely on Chimel's rationales in reaching our holding. FN4
>
> FN4. Other courts have followed this approach as well. See Ferrell v. State, 649 So.2d 831, 833 (Miss. 1995) (holding that search of arrestee's car conducted after he had been handcuffed and placed in patrol car did not fall within search incident to arrest exception because the rationales underlying the exception were absent); State v. Greenwald, 109 Nev. 808, 858 P.2d 36, 37 (1993) (same, citing Chimel).

It is obvious that there is disagreement and confusion about the issue raised here by Meister of the scope of the "Belton Rule" as applied by Thornton supra.

The Indiana Court of Appeals on p. 10-11 of its opinion stated:

> Meister, however, contends that the search of her truck incident to Wymer's arrest violated the Fourth Amendment because it was not needed for officer safety and would not have produced any evidence relating to Wymer's arrest for driving while suspended because Wymer had already gotten out of the truck when he was arrested and was in handcuffs when the police searched the truck. In support of her argument, she relies on Justice Scalia's concurring opinion in *Thornton*. The State argues, "[i]t is of no consequence where Wymer

may have been when the search occurred because the holdings in both *Black* and *Thornton* create a bright-line rule that a search of a vehicle incident to arrest is proper even [if[a defendant is not in the car when the arrest physically occurs."…. We agree with the State.

"The need for a clear rule, readily understood by police officers and not depending on differing estimates of what items were or were not within reach of an arrestee at any particular moment, justifies the sort of generalization which *Belton* enunciated." *Thornton* v. U.S. at 622-23. Indeed, as the *Belton* Court noted:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.

New York v. Belton, 453 U.S. at 461 (quoting *United States v. Robinson*, 414 U.S.

218(1973)). Thus, Meister's argument that the search of her truck incident to Wymer's arrest violated the Fourth Amendment fails. Appendix p. 23, 24.

The Indiana Appellate Court, failed to recognize that Meister relied not only Justice Scalia's concurring opinion in Thornton supra but also on Justice O'Conner's concurring opinion, Justice Stevens dissenting opinion, and Chief Justice Rehnquist's opinion of the Court. Part of the Reasoning of Chief Justice Rehnquist is found in footnote 4 of Thornton supra. at 624. There the 4 justices who wrote or affirmed the plurality opinion stated:...

> [P]etitioner has never argued that Belton should be limited "to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle...nor did any court below consider Justice Scalia's reasoning...**citation omitted**...("[W]here issues are neither raised nor considered by the Court of Appeals, this Court will not ordinarily consider them... **citation omitted**...). Thornton at 624.

Further, the Thornton Court declined to address Thornton's argument that the scope of a Belton search incident to arrest should be limited to those who are within reaching distance of the car, as it was outside the scope of the question on which certiorari was granted. Thornton at 622.The only "bright line" ruling the Thornton Court made was:

> (...while an arrestee's status as a "recent occupant" may turn on his temporal or spatial

> relationship to the car at the time of his arrest and search, it certainly does not turn on whether he was inside or outside the car at the moment the officer first initiated contact with him). Id at 621.

The plurality in the Thornton Court left both issues (raised here by Meister) for another day as outside the scope of issues presented.

The issues that the Thornton Court declined to address are the issues which Meister raised at trial and on appeal.

The "within reaching distance" goes to the officer safety issue. In the case at bar there obviously was no officer safety concern as

1) Wymer was placed in the police cruiser, in handcuffs when the search of the truck occurred.

2) After Wymer got out of the truck, he talked to someone on his cell phone and engaged the officer in conversation long enough for the officer to call his dispatcher and check on the status of Wymer's license. If the officer had a safety concern, he would have handcuffed Mr. Wymer immediately and asked questions later.

As far as evidence relevant to the crime for which Wymer was arrested, he was arrested for driving while suspended.

The Appellate Court agreed that it was unlikely that evidence would be uncovered relevant to driving while suspended in a search of the truck. Appendix p. 27,28.

In the instant case, Officer Bradbury made the type of search that was the concern of all the Supreme Court Justices when he said he was going

to make a search incident to arrest when Wymer was arrested for driving while suspended.

Justice O'Conner expressed concern in her concurring opinion where she wrote..."lower court decisions seem now to treat the ability to search a vehicle incident to the arrest of a recent occupant as a police entitlement rather than as an exception justified by the twin rationales"...(evidence sought having nexus to crime arrested for and officer safety). She further wrote that Scalia's approach appeared to be "built on firmer ground" but she wouldn't adopt it because neither side had a chance to "speak to its merit". Thornton at 632.

Further concern for the status of the law was expressed in Justice Stevens' dissent with which Justice Souter joined, as he concluded by saying,

I fear that today's decision will contribute to a massive broadening of the automobile exception,... **citation omitted**... when officers have probable cause to arrest an individual but not to search his car. Justice Stevens called the Belton rule a " swollen rule" with no guidance for further application. Id. at 636.

If Thornton is to be controlling in this case, then this court must look in depth at its analysis.

Remember, the "Belton rule" relied on the language of Robinson supra which pertained to the search of a person, not a vehicle. The Thornton plurality used the Belton rule and would not address officer safety or nexus of the crime of arrest to a search of the vehicle as both were outside the scope of the questions presented.

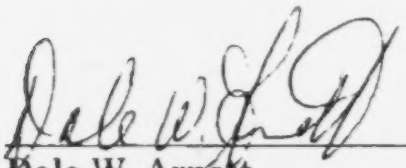
Justice O'Conner in concurrence, was dissatisfied with the state of the law as to how Lower Courts treat search of a vehicle incident to arrest as a police entitlement rather than as an exception to the warrant requirement justified by concerns of officer safety and destruction of relevant evidence. Thornton supra at 624, 625.

Justice Scalia joined by Justice Ginsberg argued that if a person is handcuffed and in a police car, the police were not in danger and should not conduct a warrantless search and there should be evidence relevant to the crime of arrest to justify a search incident to arrest. Id. at 626-632.

Justice Stevens joined by Justice Souter in dissent thought a warrantless search of an automobile should not occur if there is probable cause to arrest an individual but not to search his car. Thornton supra at 636.

With its decision in the Case at bar, the Indiana Appellate Court has ruled on an undecided question of law as to a federal Question that has not been clarified by the United States Supreme Court. Further, Arizona's Supreme Court in Gant supra, along with other jurisdictions has ruled differently and found no "bright line" rule, thus requiring "officer safety" and "preservation of evidence" to be considered in determining the lawfulness of a "search incident to arrest". Therefore, this Court should revisit the rationale behind the Thornton decision and grant Meister's Petition for Writ of Certiorari, and upon review, clarify the Belton/Thornton holdings and reverse the trial Court in this matter.

Respectfully submitted,



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